

Tucson Yellow Cab, Inc., a debtor in possession and Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 310, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 28-CA-6857

November 23, 1982

DECISION

BY MEMBERS JENKINS, ZIMMERMAN AND
HUNTER

Upon a charge filed on March 19, 1982, by Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 310, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein called the Union, and duly served on Tucson Yellow Cab, Inc., a debtor in possession, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Regional Director for Region 28, issued a complaint on April 28, 1982, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and the complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

Respondent failed to file an answer to the complaint or request an extension of time for filing an answer.

On June 14, 1982, counsel for the General Counsel filed directly with the Board a motion to transfer and continue the matter before the Board and a Motion for Summary Judgment, with exhibits attached. Subsequently, on June 25, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent did not thereafter file a response to the Notice To Show Cause, and thus the allegations of the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

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The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in the answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted as true and shall be so found by the Board, unless good cause to be contrary is shown.

The complaint and notice of hearing issued on April 28, 1982, and duly served on Respondent and the Union, specifically states that unless an answer to the complaint is filed by Respondent within 10 days of service thereof "all of the allegations in the complaint shall be deemed to be admitted to be true and shall be so found by the Board." Further, according to the uncontroverted allegations of the General Counsel's memorandum in support of the Motion for Summary Judgment, by letter dated May 26, 1982, and attached to the Motion for Summary Judgment, counsel for the General Counsel advised Respondent that an answer was required and that if Respondent failed to file an answer, a Motion for Summary Judgment would be filed with the Board. Respondent did not file an answer, but advised counsel for the General Counsel by letter to "take any action you deem proper under the circumstances."

Good cause for failure to answer the complaint has not been shown. Under the rule set forth above, the allegations of the complaint are deemed admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment, to the extent set forth below.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent is the debtor in possession of Tucson Yellow Cab, Inc., an Arizona corporation engaged in the business of operating a fleet of taxicabs. During the past calendar year, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000. During the same period Respondent purchased and received at its Tucson, Arizona, facility products, goods, and materials valued in excess of

\$50,000 from other enterprises located within the State of Arizona, each of which other enterprises had received the said products, goods, and materials directly from points located outside the State of Arizona.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 310, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All regular and extra drivers, dispatchers, telephone operators, and mechanics; excluding office clerical employees and guards and supervisors as defined in the Act.

At all times material, the Union has been the designated exclusive collective-bargaining representative of Respondent's employees in the above-described unit, and has been recognized as such by Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period November 1, 1979, to November 1, 1982.

Since on or about November 1, 1981, and continuing to date, Respondent has failed and refused to adhere to and abide by the terms of the above-described collective-bargaining agreement by unilaterally failing and refusing to make its required contributions on behalf of its unit employees to the Western Conference of Teamsters Pension Trust Fund as provided for in the collective-bargaining agreement.

Since on or about March 18, 1982, and continuing to date, Respondent has failed and refused to meet and confer or otherwise to negotiate with the Union over the effects upon the employees in the bargaining unit of Respondent's decision to cease its operations and sell its assets.

We find that by the aforesaid conduct Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with

the Union as the exclusive representative of the employees in the appropriate unit. By such conduct, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE BANKRUPTCY PROCEEDING

Respondent is a party to a bankruptcy proceeding currently pending in the United States Bankruptcy Court for the District of Arizona. On June 23, 1982, Judge William A. Scanland of that Court issued an order granting a permanent injunction which ordered that the Board, its agents, attorneys, employees, and successors be "restrained and enjoined [sic] until further order of this Court from proceeding with or continuing in any manner the . . . administrative proceeding [herein] other than to determine whether or not an unfair labor practice has been committed by the debtor [Respondent]."¹

In compliance with this injunction, therefore, we grant the General Counsel's Motion for Summary Judgment only to the extent that we find Respondent has committed the unfair labor practices discussed above. However, for the convenience and information of all parties, we note the terms of the remedy normally granted for violations of the type found herein. In addition to an order requiring Respondent to cease and desist from the violations found, we would order Respondent to make the contractually required pension fund contributions which have been unlawfully withheld, together with any additional amounts as set forth in *Merryweather Optical Company*, 240 NLRB 1213 (1979). Further, the normal remedy for the effects bargaining violation would include an order to bargain over those effects as well as a limited backpay requirement intended to restore the economic strength of the Union, as specified in *Transmarine Navigation Corporation and its Subsidiary, International Terminals, Inc.*, 170 NLRB 389 (1982).² In view of this injunction, and the limited nature of the present Decision, we shall retain jurisdiction over this proceeding pending the outcome of the bankruptcy proceedings described above.

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

¹ *In the Matter of Tucson Yellow Cab Company, Inc., debtor*, No. 81-00103. (B.C. Ariz. 1982.)

The Board, a defendant in the bankruptcy proceeding, has appealed Judge Scanland's order to the United States Court of Appeals for the Ninth Circuit Bankruptcy Panel.

² Member Hunter finds it unnecessary to decide at this time whether he would join in ordering a *Transmarine* remedy in this case.

CONCLUSIONS OF LAW

1. Tucson Yellow Cab, Inc., a debtor in possession, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 310, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.

3. All regular and extra drivers, dispatchers, telephone operators, and mechanics, excluding office clerical employees and guards and supervisors as defined in the Act constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material herein, the Union has been the exclusive representative of the employees

in the above-described appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By failing and refusing, since on or about November 1, 1981, and continuing to date, to make its contractually required contributions on behalf of its unit employees to the Western Conference of Teamsters Pension Trust Fund, Respondent has violated Section 8(a)(5) and (1) of the Act.

6. By failing and refusing, since on or about March 18, 1982, and continuing to date, to meet and confer or otherwise to negotiate with the Union over the effects upon its unit employees of its decision to cease operations and sell its assets, Respondent has violated Section 8(a)(5) and (1) of the Act.